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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

**IN RE: CATHODE RAY TUBE (CRT)  
ANTITRUST LITIGATION**

Master File No. CV-07-5944 JST

MDL No. 1917

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### This Document Relates to:

*Crago, d/b/a Dash Computers, Inc., et al. v.  
Mitsubishi Electric Corporation, et al.*, Case  
No. 14-CV-2058 JST.

**DIRECT PURCHASER PLAINTIFFS'  
SUPPLEMENTAL BRIEF IN SUPPORT OF  
FINAL APPROVAL OF CLASS ACTION  
SETTLEMENT WITH THOMSON  
DEFENDANTS**

Date: December 15, 2015  
Time: 10:00 a.m.  
Judge: Honorable Jon S. Tigar  
Courtroom: 9

1           **I. INTRODUCTION**

2           Direct Purchaser Plaintiffs’ (“DPPs”) submit this supplemental brief in response to the  
 3 Court’s Order Regarding Direct Purchaser Plaintiffs’ Settlement with Thomson Defendants  
 4 (“Order”) (Nov. 18, 2015) (ECF No. 4194).

5           The Court ordered DPPs to provide information regarding their “potential recovery” if they  
 6 prevail at trial and “[t]he likely recovery per plaintiff under the terms of the settlement.” Order, p.  
 7 1:23–25. As to the first question, while a joint and several judgment against Thomson, after  
 8 trebling, could exceed two billion dollars, as a practical matter DPPs’ recovery would be limited by  
 9 Thomson’s ability to pay. DPPs believe that the \$9.75 million settlement before the Court is a  
 10 reasonable recovery in light of Thomson’s financial condition.

11           As to the second question, the proposed plan of allocation provides for a *pro rata*  
 12 distribution of the settlement proceeds. Each class member’s share will therefore depend on the  
 13 size of its claim and the total amount of claims submitted, as well as the Court’s award of attorney  
 14 fees and expenses. Class members accounting for the bulk of the commerce in the class, however,  
 15 will receive substantial sums—e.g., tens or hundreds of thousands of dollars—from this settlement.

16           **II. THE BASIS FOR THE THOMSON SETTLEMENT**

17           **A. Thomson’s Financial Condition**

18           As indicated in DPPs’ preliminary and final approval memorandums, Thomson’s financial  
 19 condition was the primary consideration with regard to settlement. *See Memo. of P. & A. in Supp.*  
 20 *of DPPs’ Mot. for Prelim. Approval of Class Action Settlement with the Thomson and TDA Defs.*  
 21 *at p. 11:11–23 (Feb. 13, 2015) (ECF No. 3562) (“Prelim. Approval Mot.”); DPPs’ Memo. in Supp.*  
 22 *of Final Approval of Class Action Settlement with Thomson Defs. at p. 13:10–22 (Oct. 2, 2015)*  
 23 *(ECF No. 4091). At the time the settlement was reached in December 2014, DPPs concluded that a*  
 24 *net **recovery** from the Thomson Defendants substantially in excess of the \$9.75 million settlement*  
 25 *amount was unlikely, even if they prevailed at trial, because of Thomson’s financial condition.*  
 26 *Declaration of R. Alexander Saveri in Support of DPPs’ Supplemental Brief in Support of Final*  
 27 *Approval of Class Action Settlement with Thomson Defendants (“Saveri Supp. Decl.”) ¶ 2.*

1           Thomson provided DPPs with credible information demonstrating that Defendant  
 2 Technicolor USA, Inc. (“Thomson Consumer”) could not withstand a significant judgment. Among  
 3 other things, this documentation showed a negative cash flow in the three years preceding the  
 4 settlement and that Thomson Consumer was significantly indebted to its French parent company,  
 5 Defendant Technicolor SA (“Thomson SA”). *Id.* ¶ 3.

6           In addition, Thomson provided DPPs with credible information that DPPs would face  
 7 substantial problems enforcing a significant judgment against Thomson SA, including that it had  
 8 emerged from a French bankruptcy proceeding in July, 2014. Thomson SA’s 2013 Annual Report<sup>1</sup>  
 9 indicated that it had no net income (at p. 158), and had restructured debt exceeding one billion  
 10 euros (p. 165), among other things. Saveri Supp. Decl. ¶ 4. Thomson SA also provided DPPs with  
 11 information regarding its existing secured debt, including loan covenants that could be impacted by  
 12 an adverse judgment. In addition, DPPs understood that it could re-enter bankruptcy at any time,  
 13 and that French bankruptcy proceedings could easily take five to ten years, and, assuming money  
 14 remained after payment of secured creditors, would likely result in the substantial reduction of any  
 15 judgment DPPs might obtain, if not outright disallowance.<sup>2</sup> *Id.* ¶ 5.

16           Finally, DPPs understood that Thomson was also subject to the claims of the Direct Action  
 17 Plaintiffs (“DAPs”) and the Indirect Purchaser Plaintiffs (“IPPs”). Collectively, the commerce  
 18 involved in the DAP claims was roughly equal to DPPs’ claims; the IPPs’ claims substantially  
 19 exceeded DPPs’ claims. Several of the DAPs were set for trial against Thomson (and other  
 20 defendants) in March of 2015. Thomson’s ability to satisfy a judgment would be further reduced by  
 21 a judgment or settlement of these claims; a judgment might also trigger bankruptcy. *Id.* ¶ 6.

22           In these circumstances, DPPs concluded that there was a substantial possibility that they  
 23 might not be able to collect anything from the Thomson Defendants regardless of the size of any  
 24 judgment they obtained, and that the likelihood of netting substantially more than \$9.75 million  
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26           <sup>1</sup> Technicolor SA, *Annual Report 2013*, Technicolor (Mar. 27, 2014),  
 27 <http://www.technicolor.com/en/download/file/fid/6517>.

28           <sup>2</sup> Thomson also argued that they would have substantial arguments in a French court that any  
 judgment DPPs obtained should not be recognized.

1 was low. *Id.* ¶ 7.<sup>3</sup>

2           **B. The Benefits to Class Members**

3           As noted above, DPPs anticipate that the settlement proceeds, less court awarded attorney  
 4 fees and litigation expenses, will be paid to class members who submit claims on a *pro rata* basis.  
 5 Although potentially there are thousands of class members, DPPs' analysis of transactional data  
 6 produced in the action indicates that a few hundred class members account for almost all of the  
 7 purchases by the class. For example, the top twenty purchasers appear to account for nearly 50% of  
 8 class purchases.<sup>4</sup> The average recovery from the Thomson settlement for each of these class  
 9 members will therefore likely be approximately \$240,000, less court awarded fees and expenses.  
 10 The top 200 class members appear to account for over 75%. The 50th largest purchaser accounts  
 11 for approximately 0.25% of class purchases—its likely payment would be approximately \$24,000,  
 12 less its share of attorney fees and expenses. Saveri Supp. Decl. ¶ 8.

13           **III. CONCLUSION**

14           DPPs respectfully submit that this information provided above confirms that the Thomson  
 15 settlement before the Court is fair and reasonable and should be finally approved.

16           Dated: December 1, 2015

Respectfully submitted,

17           \_\_\_\_\_  
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<sup>3</sup> The IPPs came to a similar conclusion. They settled with Thomson and TDA in June 2015 for \$13.75 million. In their preliminary approval papers, IPPs set forth similar concerns about Thomson's ability to satisfy a judgment. See IPPs' Suppl. Memo. of P. & A. in Supp. of Prelim. Approval to Include Additional Settlements at p. 6:11–22 (June 13, 2015) (ECF No. 3875).

<sup>4</sup> While DPPs believe that the transactional data provides a reliable indication of class members' purchases, the final determination of each class member's pro rata share will depend on the actual claims submitted.

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